

FILED

JAN 11 2005

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

**LARRY W. PROPER, CLERK
FLORENCE, SC**

EW 1-11-05

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

GEORGE HEFFERNAN,
a/k/a GEORGE W. MARSHALL,

Defendant.

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) Civil Action No.: 4:04-23302-25
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) Order of Preliminary Injunction and
) Other Equitable Relief
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Plaintiff Commodity Futures Trading Commission ("Commission") has filed a Five-Count Complaint for injunctive and other equitable relief, and moved, pursuant to Section 6c of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 13a-1 (2002), for a preliminary injunction and other equitable relief against Defendant George Heffernan ("Heffernan").

On January 4, 2005, a hearing was held before the undersigned to consider whether there should be any modification of this Court's December 21, 2004, ex parte Statutory Restraining Order with Asset Freeze and whether plaintiff's motion for a preliminary injunction and/or for other equitable relief should be granted. At that time, legal counsel for the plaintiff appeared and offered legal argument in this regard. The defendant, although provided with adequate notice, did not appear.

Having carefully considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's motion, as well as the legal argument and evidence provided by the Commission at the January 4, 2005, hearing, the undersigned finds that:

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1. This Court has jurisdiction over the subject matter of this case pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, and venue is proper because many of the acts and practices in violation of the Act occurred within this district, among other places.
2. There is good cause to believe that Defendant Heffernan has engaged in violations of the Act and the Commission's Regulations, 17 C.F.R. §§ 1 *et. seq.* (2004), specifically:
 - a. Fraud by a commodity pool operator ("CPO"), 7 U.S.C. § 6o(1) and 17 C.F.R. § 4.41(a);
 - b. Fraud by a commodity trading advisor ("CTA"), 7 U.S.C. § 6o(1) and 17 C.F.R. § 4.41(a);
 - c. Failure to register with the Commission while acting as a CPO, 7 U.S.C. § 6m(i);
 - d. Failure to make required disclosures, pursuant to 17 C.F.R. § 4.21; and
 - e. Violation of a Commission Order, and consequently Section 6c of the Act, 7 U.S.C. § 13a-1.
3. The Commission has established a *prima facie* case of past violations and a reasonable likelihood that the violations will continue.

DEFINITIONS

As defined herein "Defendant" means Heffernan, also known as George W. Marshall, and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of Heffernan, and any person who receives actual notice of this Order by personal service

or otherwise insofar as he or she is acting in concert or participation with Heffernan.

RELIEF GRANTED
Prohibited Conduct
I.

IT IS HEREBY ORDERED that, until a final adjudication on the merits may be had, Defendant Heffernan is restrained and enjoined from directly or indirectly:

1. Employing a scheme to defraud a client or prospective client while acting as a CPO, and advertising in a manner that employs a scheme to defraud a client or prospective client while acting as a CPO, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1), and Commission Regulation 4.41(a), 17 C.F.R. § 4.41(a), including, but not limited to:
 - a. Making any statement that guarantees profit to prospective pool participants and pool participants, including any statement that Heffernan has developed a "no loss" or "100% accurate" commodity pool;
 - b. Soliciting prospective pool participants without disclosing his prior commodities fraud violations in all solicitation materials; and
 - c. Soliciting prospective pool participants without disclosing the performance of each commodity futures trading account in which he held discretionary trading authority during the period of January 1999 through the present, including those accounts in which he lost an aggregate of over \$23,000 during the period of January 1999 through January 2001.

2. Engaging in a course of business that operates as a fraud upon a client while acting as a CTA, and advertising in a manner that employs a scheme to defraud a client or prospective client while acting as a CTA, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1), and Commission Regulation 4.41(a), 17 C.F.R. § 4.41(a), including, but not limited to:
 - a. Making any statement that guarantees profit to clients or prospective clients of his CTA services, including any statement that Heffernan has developed a "no loss" or "100% accurate" trading system;
 - b. Soliciting clients for his CTA services without disclosing his prior commodities fraud violations in all solicitation materials; and
 - c. Soliciting clients for his CTA services without disclosing the performance of each commodity futures trading account in which he held discretionary trading authority during the period of January 1999 through the present, including those accounts in which he lost an aggregate of over \$23,000 during the period of January 1999 through January 2001.
3. Making use of any means or instrumentalities of interstate commerce while acting as an unregistered CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1);
4. Soliciting clients and prospective clients while acting as a CPO, without making required disclosures, as mandated by Commission Regulation 4.21, 17 C.F.R. § 4.21.
5. Violating any provision of the Commission's September 6, 2000 Order, including but not limited to publishing any advertisement for his commodity pool or CTA services in *Investor's Business Daily* newspaper, *Futures Magazine*, or other periodical or

advertising medium, without complying with the undertaking set forth in Section VI paragraph 3(c) of the Order.

II.

IT IS FURTHER ORDERED that Defendant Heffernan shall serve upon Plaintiff Commission no later than January 21, 2005, an accounting or other statement under oath of all assets, whether located within or outside of the territorial United States, held in either Defendant's name or in which he has had any direct or indirect beneficial interest, including those accounts held in his wife's name, from February 25, 2003 through the date of this Order, stating:

1. The location and disposition of each asset and the name of the institution, account number, and location of each account with any bank, financial institution or brokerage firm;
2. The names, addresses and telephone numbers of all persons and entities who, during the period of July 1, 2004 through the date of this order, entrusted funds with Heffernan, or any entity controlled by Heffernan, for investment in commodity futures or options contracts, and, for each client or customer, the dates and amounts of their investments and withdrawals; and
3. The names, addresses and telephone numbers of all persons and entities who, during the period of February 25, 2003 through the date of this Order, purchased any CTA service offered by Heffernan, including, but not limited to, the trading methods and electronic mail subscription service offered for sale on the Index Analysis Service Internet website, and, for each client, the dates and amounts of their purchases.

III.

IT IS HEREBY FURTHER ORDERED that this Order shall be binding upon Defendant Heffernan, along with his officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise (including service by facsimile transmission).


IV.

IT IS HEREBY FURTHER ORDERED that no bond need be posted by Plaintiff Commission because it has made a proper showing of a *prima facie* case pursuant to Section 6c of the Act.

V.

IT IS HEREBY FURTHER ORDERED that this Order, the *Ex Parte* Statutory Restraining Order dated December 21, 2004, and the Supplemental Statutory Restraining Order dated January 11, 2005, shall remain in force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

IT IS SO ORDERED.


Terry L. Wooten
United States District Judge

January 11, 2005
Florence, South Carolina